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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DEWAYNE ANTWINE JACKSON,

Defendant and Appellant.

2d Crim. No. B183838  
(Super. Ct. No. SA055265-01)  
(Los Angeles County)

Dewayne Antwine Jackson appeals a judgment following conviction of possession of marijuana for sale, with a finding of a prior serious felony conviction. (Health & Saf. Code, § 11359; Pen. Code, §§ 667, subs. (b)-(i) & 1170.12, subs. (a)-(d).)<sup>1</sup> We conclude that the prosecutor did not commit misconduct and affirm.

FACTS AND PROCEDURAL HISTORY

During the afternoon of February 1, 2005, Hawthorne Police Officer Larry Grajeda drove to the 13600 block of Lemoli Avenue in Hawthorne, a neighborhood known for narcotics activities. Grajeda parked his unmarked vehicle and surreptitiously videotaped some, but not all, of his observations during his 20- to 25-minute surveillance.

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<sup>1</sup> All further statutory references are to the Penal Code unless stated otherwise.

When Grajeda arrived, he saw Jackson standing at the driver's side window of a parked Nissan automobile, speaking to a passenger. A person driving a Camaro automobile stopped and Jackson waved to the driver. Jackson then walked toward a cinder-block wall, reached down, stood up, and walked to the Camaro automobile. He leaned inside for four seconds, then walked away, placing his hand in his pocket. The driver of the Camaro drove away.

Several minutes later, the driver of a compact automobile drove by. Jackson nodded to the driver, who stopped. Jackson walked to the cinder-block wall, reached down into a black plastic bag, and removed an object. He then walked toward several parked automobiles and Grajeda lost sight of him.

Thereafter, in three incidents, a pedestrian approached Jackson. Each time he went to the cinder-block wall, retrieved an object, returned to the pedestrian, and conducted an apparent narcotics sale. Later, Jackson walked to a flowerbed across the street, bent over, manipulated an object, stood up and walked away, placing his hands in his pockets.

Grajeda summoned assistance to detain and arrest Jackson. Police Officer Peter Goetz searched the area near the cinder-block wall and discovered a black plastic bag containing 11 baggies of marijuana. He also found a razor blade, baggies containing marijuana, and rock cocaine in the flowerbed. During a search of Jackson, a police officer found marijuana in his sock and \$44 in his pocket.

Grajeda did not videotape the incident with the compact automobile or the three pedestrians, either because the incidents were out of his view or because a group of teenagers gathered near his automobile. At trial, the prosecutor played the three-minute videotape regarding the incident with the Camaro automobile.

Latrice Brown testified that she is Jackson's girlfriend and that she was in the Nissan automobile. She stated that she did not see him retrieve any items from a black plastic bag or the flowerbed, nor did he engage in any drug sales. Brown testified that she and Jackson were "just talkin" for several hours that afternoon.

The jury convicted Jackson of possession of marijuana for sale, but could not agree upon a count of possession of cocaine base for sale. (Health & Saf. Code, § 11351.5.)

Jackson admitted suffering a prior felony conviction for robbery, alleged for recidivist sentencing. (§§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d).) The trial court dismissed the count regarding possession of cocaine base for sale pursuant to section 1385, and sentenced Jackson to a prison term of 32 months.

Jackson appeals and contends that the prosecutor committed misconduct during redirect examination and summation. He claims that the misconduct denied him a fair trial and involved deceptive and reprehensible methods of persuasion. (*People v. Young* (2005) 34 Cal.4th 1149, 1184 [discussing federal and state standards of review regarding claims of prosecutorial misconduct].)

## DISCUSSION

### I.

Jackson argues that the prosecutor denigrated defense counsel by stating during redirect examination that "defense counsel seemed surprised" that most of the surveillance was not recorded. He claims the prosecutor's comment belittled the defense strategy to distinguish between Officer Grajeda's recorded and unrecorded observations. (*People v. Frye* (1998) 18 Cal.4th 894, 978 [prosecutor's belittlement of defense counsel directs jury's attention from evidence and is improper].)

Although it would have been more professional not to voice an opinion about defense counsel, the prosecutor's reference to defense counsel's "surprise" is not prosecutorial misconduct. The brief comment did not denigrate defense counsel, and was a "fair response" to defense counsel's tactic of eliciting testimony that much of the surveillance was not recorded. (*People v. Frye, supra*, 18 Cal.4th 894, 978.) "In addressing a claim of prosecutorial misconduct that is based on the denigration of opposing counsel, we view the prosecutor's comments in relation to the remarks of defense counsel, and inquire whether the former constitutes a fair response to the latter." (*Ibid.*) Moreover, there is no reasonable likelihood the jury construed the prosecutor's momentary comment as an attack upon defense counsel's integrity. (*People v. Young, supra*, 34 Cal.4th 1149, 1189.)

## II.

Jackson asserts that the prosecutor mischaracterized the evidence during rebuttal summation and suggested the existence of evidence other than that admitted at trial. He points out that the prosecutor argued that defense witness Latrice Brown "cut off the license plate number" of the Nissan automobile "so [it] could not be identified"; that the videotape revealed "the [license] plate is actually cut off"; that Brown testified that Jackson "never went to that wall [or] to that [black plastic] bag"; and that Officer Grajeda saw Jackson "putting money" into his pocket. Jackson adds that Brown testified that the Nissan automobile belonged to her grandmother, that she was not paying attention to his behavior that afternoon, and that Grajeda saw him place only his hand (but not money) into his pocket.

Prosecutors have wide latitude to discuss and draw inferences from the evidence at trial. (*People v. Lucas* (1995) 12 Cal.4th 415, 473.) Whether the inferences drawn by the prosecutor are reasonable is a question for the jury. (*Id.*, at p. 474.)

Here the prosecutor did not commit misconduct because she argued reasonable inferences to be drawn from the evidence. After viewing the videotape, the jury could decide whether part of the license plate of the Nissan automobile was "cut off." It is also a reasonable inference that Jackson placed money into his pocket when he put his hand there. Although Brown testified that she did not pay attention to Jackson that afternoon, she also testified on direct examination that she did not see him speak to pedestrians or the driver of a compact automobile, exchange money or "anything" with another person, or retrieve items from a black plastic bag. The prosecutor's rebuttal summation did not deny Jackson a fair trial or involve deceptive or reprehensible methods to persuade the jury. (*People v. Young, supra*, 34 Cal.4th 1149, 1184 [federal and state standards of review of asserted prosecutorial misconduct].)

## III.

Jackson contends that the prosecutor improperly vouched for the credibility of Officer Grajeda, and argued evidence that was not admitted at trial, by stating during

summation that "[Police Officer] Rafael Perez was discovered for lying, for lying to me." (*People v. Frye, supra*, 18 Cal.4th 894, 971 [prosecution may not present impression that it has taken steps to assure a witness's credibility].) He points out that the prosecutor made the statement in response to defense counsel's summation regarding the Rampart police scandal and police witness credibility.

A prosecutor may not vouch for the credibility of a witness or bolster his testimony by referring to evidence outside of trial. (*People v. Frye, supra*, 18 Cal.4th 894, 971.) Here the prosecutor did not vouch for the credibility of Officer Grajeda. She attempted to respond to defense counsel's argument that police officers sometimes lie without discovery or punishment. Her reference to her experience with Officer Perez was not proper, but she immediately informed the jury that it must "determine the believability of a witness." Moreover, assuming error, Jackson has not established that the prosecutor's conduct resulted in an unfair trial, denied him due process of law, or involved deceptive or reprehensible methods to persuade the jury. (*People v. Young, supra*, 34 Cal. 4th 1149, 1184.) The prosecutor's comment was brief and could not have caused Jackson prejudice under any standard of review.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J

James R. Dabney, Judge  
Superior Court County of Los Angeles

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